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Does the Children's Internet Protection Act Induce Public Libraries to Violate the First Amendment?

by Susanna F. Fischer

PREVIEW of United States Supreme Court Cases, pages 309-314. © 2003 American Bar Association.

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ISSUE

By conditioning the receipt of federal funding to public libraries on the operation of filtering software on library Internet-connected computers, does the Children's Internet Protection Act induce public libraries to violate the First Amendment, thereby exceeding Congress's power under the Spending Clause?

FACTS

Public libraries receive federal assistance for the provision of Internet access and related services to their patrons under two statutory programs, the E-Rate program and the LSTA program. The E-Rate program, under the Telecommunications Act of 1996, makes libraries eligible for discounts of up to 90 percent on the purchase of Internet access and related services from telecommunications providers. 47 U.S.C. § 254(h)(1)(b), 47 C.F.R. § 54.505. The level of discounts depends on the level of economic disadvantage of the library as well as whether it is located in an urban or rural area.

The LSTA program, under the Library Services and Technology Act, provides grants to state library administrative agencies that have approved plans for programs using computer network technologies. See 20 U.S.C. §§ 9133, 9134, 9141. As a result of these federal assistance programs, the vast majority of public libraries in the United States now offer Internet access, providing library patrons with access to a wealth of information stored on Internet-connected computers around the globe. However, unfiltered Internet access also enables library patrons to access obscene and pornographic materials.

In response to concerns that library patrons, including both adults and children, were using public library computers to access obscene and pornographic materials on the Internet, Congress enacted the Children's Internet Protection Act (CIPA) as part of the Consolidated

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UNITED STATES ET AL. V. AMERICAN
LIBRARY ASSN., INC. ET AL.
DOCKET NO. 02-361

ARGUMENT DATE:
MARCH 5, 2003
FROM: UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

Case at a Glance

The Children's Internet Protection Act contains filtering provisions for public libraries that condition the receipt of federal assistance for Internet access and related services on libraries' operation of technological measures that block all patrons' access to obscene and pornographic materials and also block minor patrons' access to material that is "harmful to minors." Now the Supreme Court has agreed to review a trial court's decision that enjoined the government from enforcing these filtering provisions on the basis that they are facially invalid under the First Amendment.





Appropriations Act of 2001. See Pub. L. 106-554, Div. B, Tit. XVII, 114 Stat. 2763A-335. CIPA, which became effective on April 21, 2001, includes provisions that condition federal assistance to public libraries, under both the E-Rate and LSTA programs, on library operation of "technology protection measures" blocking all library patrons' access to "visual depictions" that are obscene or child pornography, and blocking minor patrons' access to "visual depictions" that are "harmful to minors." CIPA §§ 1712 (codified at 20 U.S.C. § 9134(f)(1)(A)(i) and (B)(i)) and 1721(b) (codified at 47 U.S.C. § 254(h)(6)). These provisions will be referred to below as CIPA's "library filtering provisions."

CIPA defines the term "technology protection measure" as "a specific technology that blocks or filters access to visual depictions that are obscene, ... child pornography, ... or harmful to minors." 47 U.S.C. § 254(h)(7)(I). CIPA defines the term "harmful to minors" as "any picture, image, graphic image file, or other visual depiction that—(A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and (C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors." 20 U.S.C. § 9134(f)(7)(B), 47 U.S.C. § 254(h)(7)(G).

CIPA contains disabling provisions for public libraries receiving LSTA grants as well as for those receiving E-Rate discounts. For libraries receiving LSTA grants, CIPA provides that "an administrator, supervisor, or other authority may disable

a technology protection measure ... to enable access for bona fide research or other lawful purposes." 20 U.S.C. § 9134(f)(3). The disabling provisions for libraries receiving E-Rate discounts are very similar but are applicable to adult patrons only. See 47 U.S.C. § 254(h)(6)(D).

On March 20, 2002, a group of public libraries, library associations, library patrons, and Web site publishers filed suit against the United States and others in the United States District Court for the Eastern District of Pennsylvania, making a facial challenge to the constitutionality of CIPA's filtering provisions for public libraries. Although CIPA also contains very similar filtering provisions applicable to public schools that receive federal grants under Title III of the Elementary and Secondary Education Act of 1965 and federal assistance under the E-Rate program, no challenge was made to the school provisions of CIPA.

Pursuant to Section 1741(a) of CIPA, a three-judge court was convened to try the case on an expedited schedule, to enable libraries to ascertain whether they had to certify compliance with CIPA by July 1, 2002, in order to receive federal assistance for the coming year. After an eight-day trial, the federal district court ruled unanimously that the government was permanently enjoined from enforcing CIPA's library filtering provisions, on the basis that these provisions required public libraries, as state actors, to violate the First Amendment and were consequently facially invalid. *American Library Association et al. v. United States et al.*, 201 F. Supp.2d 401, 496 (E.D. Pa. 2002).

Section 1741(b) of CIPA provides for direct appeals to the United States Supreme Court. On June 20,

2002, the government filed an appeal from the decision of the three-judge federal district court.

CASE ANALYSIS

This case concerns a facial challenge to the constitutionality of conditions set by Congress on the receipt of federal assistance by public libraries, on the basis that they induce libraries to violate the First Amendment. It is undisputed that public libraries that receive funding from local and state governments are state actors that are subject to the First Amendment.

The United States Constitution sets out Congress's spending power in Article I, § 8, cl. 1, which provides that "Congress shall have Power ... to pay the Debts and provide for the common Defence and general Welfare of the United States." Both appellants and appellees agree that the constitutional limitations on Congress's exercise of its spending power are set out in the Supreme Court's decision in *South Dakota v. Dole*, 483 U.S. 203 (1987), which upheld a federal statute barring states with drinking ages under 21 from receiving federal highway funds.

Dole enumerates four general limitations on Congress's ability to impose conditions on the receipt of federal assistance: (1) "the exercise of the spending power must be in pursuit of the general welfare"; (2) any conditions on receipt of federal funds must be sufficiently clear to enable recipients "to exercise their choice knowingly, cognizant of the consequences of their participation"; (3) any conditions on receipt of federal funds must bear some relation to the purpose of the federal funding program; (4) the spending power "may not be used to induce the States to engage in activities that would themselves be unconstitutional." *Id.* at 208-210. The parties

agree that only the fourth of these constitutional limitations is at issue in this case. Appellants contend that the Eastern District of Pennsylvania erred in holding that CIPA's filtering provisions violate the fourth *Dole* limitation because they will induce public libraries to violate the First Amendment of the United States Constitution, which provides that "Congress shall make no law ... abridging the freedom of speech." Appellees contend that the district court ruled correctly on this issue.

Whether or not CIPA induces public libraries to violate the First Amendment depends on what level of scrutiny applies to CIPA's filtering provisions. The parties agree that software filters are content-based restrictions on speech, which are generally subject to strict scrutiny. However, appellants contend that strict scrutiny is not the appropriate standard for CIPA's public library filtering provisions because these provisions apply only to speech on government property. This case hinges on the applicability of the intricate doctrine known as "forum analysis" that the Supreme Court has developed to determine the appropriate level of scrutiny for content-based regulations limiting expression on public property. Under forum analysis, there are three types of public forums.

The first type of public forum, known as the traditional public forum, is public property such as streets or parks that have "immemorially been held in trust for the use of the public." *Hague v. CIO*, 307 U.S. 496, 515 (1939). Content-based exclusions on expression in traditional public forums are subject to strict scrutiny, which requires the government to show that the regulation is necessary to serve a compelling state interest and is narrowly tailored to achieve that end. See *International*

Society for Krishna Consciousness Inc. v. Lee, 505 U.S. 672, 678 (1992). The second type of public forum is called a "designated public forum," which is a space that is open to the public for discussion of certain subjects or limited to certain speakers. As long as the government does not discriminate on the basis of viewpoint, it is permitted to limit a designated public forum to certain speakers or the discussion of certain subjects. *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983). All remaining government property is treated under forum analysis as nonpublic forums, for which the government is permitted much greater discretion in limiting expressive activity; such regulations are subject only to "rational basis" review. *International Society for Krishna Consciousness*, 505 U.S. at 679.

The parties strongly disagree about the existence, nature, and extent of any public forum in this case. The government contends that the Eastern District of Pennsylvania erred in finding that a public library that connects its computers to the Internet creates a designated public forum that should be treated as analogous to a traditional public forum, such as a street or park, because it is widely open to the general public for speech on a virtually unlimited range of topics. The government's primary contention is that forum analysis is inapplicable to this case. This contention is founded on an analogy between the Internet and the library's general collection decisions. The government argues that neither forum analysis nor strict scrutiny applies to a public library's general collection decisions, which are subject only to rational basis review.

The government accepts that there is no authority directly on point but likens a public library's collection

decisions to other analogous situations in which the Court held that the government had broad discretion to make content-based judgments in deciding what private speech to make available to the public. In one analogous case, *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666, 672-673 (1998), the Court found that forum analysis was inapplicable to a public television station's editorial judgments about private speech or other programming it presents to its viewers. In a second case, *National Endowment for the Arts v. Finley*, 523 U.S. 569 (1998), the Court rejected forum analysis for an arts funding program that required the National Endowment for the Arts (NEA) to use content-based criteria in making funding decisions.

Appellees accept that forum analysis does not apply to a public library's exercise of judgment in selecting the material it makes available to its patrons and concede that a library's collection decisions for print and other traditional materials are not subject to strict scrutiny but rather only to rational basis review. However, appellees do not agree with the government that the same approach should apply to the provision of Internet access. A crucial issue in this case is thus the extent to which providing access to material on the Internet should be viewed as analogous to the collection of books and other traditional materials by public libraries.

As a secondary contention, the government challenges the forum analysis advocated by appellees and accepted by the district court. The government argues that if forum analysis is found to be applicable to a library's Internet-connected computers, they should be more appropriately viewed as nonpublic forums

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rather than designated public forums. The government contends that libraries do not provide Internet connections to open up a forum for public discourse but rather to further the library's traditional mission of facilitating research, learning, and recreational pursuits.

The government uses a similar argument to contend that strict scrutiny should not apply even if a public library's Internet-connected computers are held to be a designated public forum. The government argues that the designation is for the limited purpose of facilitating the library's traditional mission, namely, research, learning, and recreational pursuits. According to the government, the appropriate level of scrutiny for such a designated public forum should be whether a restriction limiting expression is reasonable in light of the limited purposes of the designated public forum. The government argues that the district court found that filtering software is a reasonably effective means to block pornography and that such material is not within the bounds of a library's traditional collection decisions.

Should appellees succeed in persuading the Court to affirm that the government's contention that strict scrutiny should apply, the Court will have to assess whether strict scrutiny is satisfied. Both parties agree on the test for strict scrutiny but sharply disagree as to whether CIPA satisfies it. To prove that CIPA's filtering requirements satisfy strict scrutiny, the government must show that (1) they serve a compelling government interest; (2) they are narrowly tailored to achieve that interest; and (3) there is no less restrictive means to serve the compelling government interest. *United States v. Playboy Entertainment Group*, 529 U.S. 803, 813 (2000).

The government argues that public libraries have a compelling interest in preventing the dissemination of obscenity, pornography, or material that is harmful to minors and also have a compelling interest in protecting library patrons from being exposed to pornographic visual depictions. The government also contends that CIPA is narrowly tailored and that any problems with narrow tailoring that may result from the nature of filtering technology are cured by CIPA's disabling conditions. Moreover, the government argues that the filtering software is the least restrictive means to further the government's compelling interests. The government contends that the other alternatives endorsed by the district court to prevent patrons from accessing illegal and harmful pornography on library Internet computers, in particular, the use of library Internet use policies, are ineffective when compared with filtering software, even if filtering software blocks some constitutionally protected speech.

Appellees argue that CIPA's filtering requirements do not satisfy strict scrutiny. This argument really hinges on how effective or ineffective filtering software, in general, is found to be when compared to other alternatives for blocking patrons' access to illegal or harmful pornography. Appellees appear to concede that there is a compelling government interest in preventing access to constitutionally unprotected speech such as obscenity and child pornography, but they contend that CIPA is not narrowly tailored because filtering software is tremendously ineffective. Appellees charge that all types of filtering software, no matter which brand, seriously overblock constitutionally protected speech.

Moreover, appellees contend that there are other less restrictive alternatives than filtering software that could be used by public libraries to bar patrons' access to illegal or harmful pornography, including the optional use of blocking software, enforcement of local Internet use policies, installation of privacy screens or recessed monitors, and placing unblocked library computers in segregated locations or well-trafficked library areas. Appellees concede that none of these alternatives are perfect but argue that the government has not established that they are too ineffective to constitute less restrictive means than filtering software. In addition, appellees point out that filtering software suffers from underblocking problems that make it ineffective in preventing access to online pornography, obscenity, and material that is harmful to minors. Appellees also contend that CIPA's disabling provisions do not cure CIPA's constitutional defects, because they do not provide for any control over a library's decision on whether to disable the software, and patrons will frequently be reluctant to request unblocking for sites concerning sensitive subjects such as sexuality or health.

Finally, the parties strenuously dispute the extent to which CIPA is an unconstitutional condition on government funding to public libraries. The doctrine of unconstitutional conditions "holds that the government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech' even if he has no entitlement to that benefit." *Board of County Commissioners v. Umbehr*, 518 U.S. 668, 674 (1996). The district court did not rule on this issue. If the Supreme Court addresses the issue, it will need to consider the extent to which public libraries are protected by the First



Amendment in making decisions about blocking software.

The parties also strongly disagree as to the extent to which the doctrine of unconstitutional conditions is applicable to public libraries. The government argues that the doctrine is inapplicable to this case because public libraries have no First Amendment rights and thus are not being asked to give up any constitutionally protected rights. Appellees counter that no Supreme Court jurisprudence or lower court decisions support the contention that libraries have no First Amendment rights. Appellees also contend that the First Amendment does apply to conditional funding to public libraries whether or not the library recipients of those funds have First Amendment rights. They argue that CIPA's funding condition unconstitutionally restricts protected speech in general by interfering with a public library's professional discretion to determine what information should be provided to members of the local community. In response, the government repeats its argument that CIPA does not impose an unconstitutional condition on the First Amendment rights of library patrons.

SIGNIFICANCE

This case is significant as the latest battle in the struggle in the courts over the extent to which Congress can lawfully regulate content on the Internet and in particular protect children from obscene, pornographic, or harmful materials on the Internet. Many people are concerned about the widespread availability of pornographic material on the Internet, but the Court has previously struck down most congressional attempts to regulate content on the Internet. The Court struck down Congress's first attempt at Internet content regulation, the

1996 Communications Decency Act. See *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997). Later, portions of the 1998 Child Online Protection Act were sent back to a lower court for review. See *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564 (2002).

This case will require the Court to assess the constitutionality of a different type of regulation than the direct content regulation at issue in *Reno v. ACLU* and *Ashcroft v. ACLU*. Instead of directly regulating Internet content, CIPA imposes filtering requirements as conditions for public libraries' receipt of federal assistance. No criminal penalties apply to violations of CIPA. Advocates of CIPA argue that its filtering requirements are voluntary because libraries do not have to accept federal funding and are given discretion as to what to filter. The Supreme Court will determine whether its generally more tolerant approach to indirect restrictions on speech that are tied to funding, as opposed to constituting direct content regulation, should apply to CIPA's Internet filtering conditions.

The Court's ruling in this case will also be a significant assessment of the effectiveness of software filters as a technology to block access to pornographic materials. Both sides admit that filtering technology is imperfect but disagree as to how this impacts the technology's effectiveness. Advocates of CIPA argue that filtering technology, albeit imperfect, is largely effective, while opponents argue that software filters both overblock and underblock constitutionally protected speech. The Court will have to consider whether software filters jeopardize free expression or whether they are an effective way to block access to constitutionally unprotected obscenity,

pornography, and material that is harmful to minors.

Depending on the outcome of this case, hundreds of millions of dollars in subsidies to public libraries may be at stake. If CIPA is upheld and public libraries fail to comply with its filtering provisions, they may lose federal assistance for Internet access and related services under the LSTA and E-Rate programs. If libraries in socio-economically deprived communities fail to receive federal assistance, they may be forced to curtail or cut back public Internet access. Lurking behind the legal arguments in this case is the significant policy question of whether CIPA's filtering provisions may widen the digital divide that already exists between those who can afford home Internet access and those who cannot and who are more likely to be minority and low-income Americans. See United States Department of Commerce National Telecommunications and Information Administration et al., *A Nation Online: How Americans Are Expanding Their Use of the Internet* (Feb. 2002).

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Congressman Mark Souder, and
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Burdens/Standards of Proof —

As a general matter, the party in a lawsuit asserting a claim or defense has the burden of presenting evidence that establishes the claim or defense. This is known as the burden of proof.

There are three burdens of proof. From the least to the most demanding, they are the preponderance-of-the-evidence burden of proof; the clear-and-convincing burden of proof; and the beyond-a-reasonable-doubt burden of proof. The first two burdens can apply in either criminal or civil cases, while the third applies only in criminal cases and then only to the prosecution.

There are no ready definitions for these burdens. There are, however, working definitions. Under the preponderance standard, the party with the burden of proof is required to come forward with credible evidence establishing that a claim or defense is more likely true than not. Under the clear-and-convincing standard, the party with the burden of proof is expected to present evidence establishing that the claim or defense is quite likely true. Under the beyond-a-reasonable-doubt standard, the prosecution must present such evidence of the defendant's guilt that a reasonable person would not hesitate to find the defendant guilty. See *Victor v. Nebraska*, 114 S. Ct. 1239 (1994).

Class Action Lawsuit — As a general rule, a class action lawsuit is one in which one or several named individuals sue for themselves and others believed to have sustained injuries or losses similar to those sustained by the named plaintiffs, but who, at the time the case is filed, are unknown both as to their identities and their actual numbers. In order for a plaintiff's lawsuit to be given class action status, the named plaintiff must show that (1) the class is so large as to make it impracticable to specify each and every plaintiff by name, (2) there exist questions of law or fact common to all members of the

plaintiff class, (3) the claims of the named plaintiffs are representative of the claims of the unnamed plaintiffs, and (4) the named plaintiffs can fairly and adequately represent the interests of the entire plaintiff class. (Note: Less common is the class action lawsuit in which the class is composed of named and unnamed defendants or in which both the plaintiffs and the defendant's side of the case constitute a class.)

Collateral review (see also habeas corpus) — Collateral review is the criminal law's fail-safe mechanism. It is intended to ensure that a conviction and sentence satisfy the requirements imposed by law, constitutional and statutory. As its name suggests, collateral review looks at a convicted defendant's trial and in some cases the sentencing proceeding; it is not, however, a second trial. As a general rule, collateral review is limited to issues of law.

To be eligible for collateral review, the petitioning party must be in custody at the time the process begins. Typically but not necessarily, custody means imprisonment. For those convicted of state-law crimes, collateral review is available under state law and federal law, the latter in the form of a petition for a writ of habeas corpus. As a general rule, state-law petitioners must exhaust all avenues of collateral review under state law before filing a federal habeas corpus petition. For federal-law petitioners, federal habeas corpus review is available after certain post-conviction avenues such as a motion to vacate a conviction or sentence have been exhausted.

For both state-law and federal-law petitioners, federal habeas corpus review begins in a trial-level court but in the collateral-review context, the trial court functions as a reviewing court. However, if the federal habeas corpus petitioner is unsuccessful in habeas court, he or she is permitted, within limiting procedural rules, to seek further review of the habeas court's

decision in the appropriate intermediate federal appeals court and if unsuccessful there, in the Supreme Court.

Damages — In law, damages means money given to a party whose legal interests have been injured. While there are several types of damages that can be given to an injured party, two of the most prominent types are compensatory damages and punitive damages.

An award of *compensatory damages* is a sum of money intended to make the injured party whole, insofar as this is possible. An award of *punitive damages* is intended to punish the wrongdoer in order to deter future wrongdoing. Usually, punitive damages go to the injured party and are over and above any award of compensatory damages. However, in some states, a portion of any punitive damages award goes to the state treasury.

Direct review — In American criminal law, a defendant is tried once, but the trial itself can be reviewed many times by many appellate courts. One channel of review is called direct review because it is initiated by a first appeal as a matter of statutory right. Direct review also is wide-ranging review because the convicted defendant is permitted to raise all procedurally proper issues regarding the trial court's disposition of his or her case — including issues of law, issues of fact, issues concerning the trial judge's use of discretion.

If the first appeal is resolved against the convicted defendant, appellate rules permit the defendant to seek discretionary review by still higher courts, generally by the highest court of the convicting state and then by the United States Supreme Court. (In federal criminal cases, the convicted defendant's initial appeal as a matter of right is to a circuit court of appeals and then as a matter of discretion to the Supreme Court.) If these courts decline to hear the defendant's case, hear the case but decide against the defendant, or if the

defendant defaults on his or her right to seek discretionary review, the direct review process ends and it is said that the defendant's conviction and sentence are final. At this point, the only avenue of relief from a conviction or sentence — retrial, resentencing, or outright release — is collateral review defined above.

Discovery — Discovery is a pretrial device in which each party to a lawsuit seeks information from the other party as well as from non-parties believed to have knowledge relevant to the issues in the case. The plaintiff seeks information through discovery to make his or her case; the defendant seeks information to support any defenses that may be available.

Diversity — This term is used whenever a federal court has jurisdiction over a case that does not involve a question of federal law. While there are several types of diversity jurisdiction, the most common type has two requirements: (1) the plaintiff and the defendant are residents of different states; (2) the dollar amount of the dispute between the parties is at least \$75,000, exclusive of interest and costs.

Habeas corpus — Under the federal habeas corpus statute, 28 U.S.C. §2254 (1994), a person held in state/local custody who believes that his or her custody violates federal law — typically, the Constitution — may challenge that custody by filing a petition for a writ (i.e., an order) of habeas corpus in federal district court. If the petitioner wins, he or she must be released or retried, at the option of the prosecuting authority.

In banc — *In banc* (sometimes spelled *en banc*) literally means "full bench." The term applies to those courts — typically, intermediate appellate courts — in which more than one judge, but less than all judges of the court, hears a case. As a general rule, when an appellate court sits *in banc*, all

active judges sit. However, in the federal system, some circuit courts of appeals have so many active judges, e.g., the Ninth Circuit with 28 judges, that sitting literally *in banc* is not feasible. Thus, for those circuits with 15 or more active judges, the size of an *in banc* court is set by circuit rule. Currently, *in banc* courts in the Fourth, Fifth, Sixth, and Ninth Circuits are composed of fewer than the entire court, with the exact number varying by circuit according to circuit rule.

Per curiam opinion — This term literally means "the opinion of the court," the Supreme Court or any appellate court. Because the opinion is the court's opinion, there is no indication of which justice/judge wrote it.

Plurality opinion — This term denotes an opinion of the United States Supreme Court in which there is no majority opinion; that is, fewer than a bare majority of five justices were able to agree on the legal basis for the Court's action in affirming, reversing, or vacating a lower court decision.

In some cases, the Court's opinion can be a *partial plurality opinion*. A partial plurality opinion is one in which at least one part of the opinion represents the views of four or fewer Justices. For an example of a partial plurality opinion, see *Hubbard v. United States*, 115 S. Ct. 1754 (1995) (Parts IV and V, a plurality of three Justices; Parts I, II, III, and VI, a majority of six Justices).

Preemption — Under the Supremacy Clause, U.S. CONST. art. VI, § 2, federal law — whether based on the Constitution, a statute, or a treaty — takes precedence over state or local law on the same matter. In other words, if federal law addresses a matter, either expressly or by implication, it trumps and renders unenforceable any state or local law on the matter.

Qualified Immunity — Qualified immunity is a defense that can be raised by a government employee whenever there is uncertainty about the lawfulness or unlawfulness of certain actions taken by the employee, actions claimed by the plaintiff to be unlawful. A government employee can avoid a trial under this defense if the employee can show that, at the time of the complained-of action, he or she could not have known that it violated the law.

Strict scrutiny — Strict scrutiny is a searching level of judicial review applied to governmental actions — federal, state, and local — challenged as unconstitutional. Strict scrutiny requires the governmental actor to show that it had a compelling reason to take the challenged action and that the action taken goes no further than necessary — is narrowly tailored — to advance the cited compelling reason.

Summary judgment — This is the name of a procedural device available to either party to a civil lawsuit that enables one or the other party to win without a trial. A party seeking summary judgment is entitled to a judgment in its favor if there is no genuine dispute about the pertinent facts, and, based on those undisputed facts, the law compels a judgment for the party who has asked for a favorable ruling.





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March 21, 2003



COVERING THE COURT'S ENTIRE MARCH
CALENDAR OF CASES, INCLUDING ...

GRUTTER V. BOLLINGER ET AL.

GRATZ ET AL. V. BOLLINGER ET AL. AND PATTERSON ET AL.

The affirmative action programs at the University of Michigan's law school and undergraduate college give racial preference to applicants from certain minority groups. Michigan claims that this practice is consistent with the Supreme Court's 1978 ruling in *University of California Regents v. Bakke* and says that the educational benefits derived from a diverse student body serve a compelling governmental interest. Barbara Grutter and Jennifer Gratz, white applicants whose credentials would have warranted admission had they been of a favored race, claim that Michigan's practice is contrary to fundamental guarantees of equality.

LAWRENCE ET AL. V. TEXAS

This case involves a constitutional challenge to a state "sodomy" law, a matter last considered by the Supreme Court 17 years ago in *Bowers v. Hardwick*. In *Bowers*, the Court rejected an argument that a Georgia sodomy law (as applied to same-sex conduct) violated the constitutional right of privacy. In addition to asking the Court to overrule its privacy holding in *Bowers*, the two men convicted for having sex with each other in this case argue that the Texas law unconstitutionally discriminates against them in violation of the Fourteenth Amendment's guarantee to every citizen "the equal protection of the laws."



Division for Public Education



Calendar

MONDAY

MARCH

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*Nguyen v. United States
and Phan v. United States*

Wiggins v. Smith et al.

TUESDAY

MARCH

25

*Federal Election
Commission v. Beaumont
et al.*

WEDNESDAY

MARCH

26

*Overton et al. v. Bazzetta
et al.*

Lawrence et al. v. Texas

MARCH

31

*Inyo County et al. v.
Paiute-Shoshone Indians
of the Bishop Community
et al.*

Stogner v. California

APRIL

1

Grutter v. Bollinger et al.

*Gratz et al. v. Bollinger
et al. and Patterson
et al.*

APRIL

2

*Breuer v. Jim's Concrete of
Brevard, Inc.*

*Dastar Corporation v.
Twentieth Century Fox Film
Corporation et al.*

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